

Federal Court



Cour fédérale

**Date: 20160714**

**Docket: IMM-5809-15**

**Citation: 2016 FC 804**

**BETWEEN:**

**BAYRON EDUARDO SIERRA ESCOTO**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT**

**(Judgment delivered orally from the Bench on July 12, 2016 in Winnipeg)**

**FOTHERGILL J.**

[1] Bayron Eduardo Sierra Escoto is a citizen of Honduras. He sought refugee protection in Canada on the ground that he and his family are under threat from the Mara 18 criminal gang.

[2] In June 2015, the Refugee Protection Division [RPD] of the Immigration and Refugee Board [Board] determined that Mr. Escoto was neither a Convention refugee nor a person in

need of protection pursuant to ss 96 and 97 of the *Immigration and Refugee Protection Act, SC* 2001, c 27 [IRPA].

[3] The RPD acknowledged in its decision that Mr. Escoto had attempted to give reliable evidence during his hearing. Nevertheless, the RPD expressed some concerns regarding the credibility of his testimony. The RPD accepted Mr. Escoto's assertion that certain individuals had made criminal threats against his brother, but found that there was insufficient evidence to support his claim that these individuals were members of the Mara 18 gang. The RPD found that the people who were threatening Mr. Escoto's family had neither the means nor the motivation to locate him in every part of Honduras. The RPD therefore concluded that the determinative issue in Mr. Escoto's claim for protection was the availability of an internal flight alternative.

[4] Mr. Escoto appealed the RPD's decision to the Refugee Appeal Division [RAD] of the Board. He attempted to adduce "new" evidence on appeal in the form of letters from family members, a police officer, a lawyer, a cultural expert and a mental health professional [the letters].

[5] In a decision dated December 2, 2015, the RAD declined to admit the letters because they did not meet the requirements of s 110(4) of the IRPA. Pursuant to this provision, "the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection". The RAD found that Mr. Escoto had not adequately explained why the information contained in the letters was

not reasonably available before the rejection of his claim. The RAD therefore refused to admit the letters into evidence and confirmed the RPD's decision.

[6] Mr. Escoto has brought an application for judicial review of the RAD's decision. He says that the RAD should have permitted the letters to be adduced pursuant to s 171(a.3) of the IRPA, which provides that the RAD "may receive and base a decision on evidence that is adduced in the proceedings and considered credible and trustworthy in the circumstances". Mr. Escoto says that the letters were credible and trustworthy, and should therefore have been admitted. He also argues that the RAD, in relying on s 110(4) of the IRPA, applied the wrong test for the admissibility of new evidence. He maintains that s 110(4) of the IRPA should have influenced only the weight given to the letters by the RAD.

[7] Mr. Escoto filed his written argument before the Federal Court of Appeal rendered its decision in *Canada (Minister of Citizenship and Immigration) v Singh*, 2016 FCA 96 [*Singh*]. In *Singh*, the Federal Court of Appeal held that a determination of whether new evidence is admissible on appeal must always ensure compliance with the explicit requirements set out in s 110(4) of the IRPA, together with the implicit requirements of admissibility found in *Raza v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 385, namely credibility, relevance, newness, and materiality (*Singh* at paras 38, 49, 74).

[8] Mr. Escoto does not challenge the reasonableness of the RAD's determination that the letters did not meet the requirements of s 110(4) of the IRPA. In light of *Singh*, Mr. Escoto's argument that the RAD applied the wrong test for refusing to admit the letters has no support in

law. Mr. Escoto's lawyer acknowledged this in oral submissions, and conceded that this Court was "duty-bound" to reject his argument. Given this concession, the application for judicial review must be dismissed.

"Simon Fothergill"

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Judge

Ottawa, Ontario  
July 14, 2016

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-5809-15

**STYLE OF CAUSE:** BAYRON EDUARDO SIERRA ESCOTO v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** WINNIPEG, MANITOBA

**DATE OF HEARING:** JULY 12, 2016

**REASONS FOR JUDGMENT:** FOTHERGILL J.

**DATED:** JULY 14, 2016

**APPEARANCES:**

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Aliyah Rahaman FOR THE RESPONDENT

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